

**BIRMINGHAM REPORTING SERVICE**

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IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

TROY E. TILLERSON, )  
                        )  
PLAINTIFF,            )  
                        )  
                        )  
                        ) CIVIL  
VS.                    ) ACTION  
                        ) NO.  
                        ) 3:05CV985-B  
THE Mega Life AND HEALTH )  
INSURANCE CORPORATION, et )  
al.,                    )  
                        )  
DEFENDANTS.

DEPOSITION OF KIP HOWARD

The deposition of KIP HOWARD was taken before Anna Tolleson, CSR, as Commissioner, on July 17, 2007, by the plaintiff, commencing at 9:00 a.m., in the office of Well, Gotshal & Manges, 200 Crescent Court, Suite 300, Dallas, Texas 75201 pursuant to the stipulations set forth herein.

**COPY**

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1 about February of '03?

2      **A** Yes.

3      **Q** When you came back on into the  
4 employee status, Mr. Howard, what was your  
5 job title?

6      **A** Senior claims specialist.

7      **Q** Same type of claims?

8      **A** Yes.

9      **Q** Association group health claims?

10     **A** Yes.

11     **Q** Is that still your job title now?

12     **A** No.

13     **Q** What's your job title currently?

14     **A** Supervisor claims risk.

15     **Q** Did you hold any other job titles  
16 between the time you were senior claims  
17 specialist and when you became supervisor  
18 claims risk?

19     **A** No.

20     **Q** When did you become the supervisor  
21 of claims risk?

22     **A** Early May of this year.

23     **Q** Who was the supervisor of claims

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1 Mr. Tillerson's certificate are mandated by  
2 any particular state?

3 **A** I don't know.

4 **Q** Do you know anything about ERISA?

5 **A** A little bit.

6 **Q** Okay. Just generally describe for  
7 me, if you would, Mr. Howard, your  
8 knowledge in that regard.

9 **A** It was an act passed in 1972 to  
10 basically shield employers from employee  
11 lawsuits regarding benefits that are  
12 provided.

13 **Q** Are you familiar with working with  
14 ERISA type plans?

15 **A** Very little. We do have a very,  
16 very, very small percentage of people who  
17 have ERISA approved policies if they were  
18 ERISA qualified when they came to us.

19 **Q** What do you mean by "ERISA  
20 approved?"

21 **A** I just mean an ERISA policy.

22 **Q** Does Mr. Tillerson have one?

23 MR. LAMPKIN: Object to the

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1 form.

2       **A**     To my knowledge, Mr. Tillerson does  
3 not have an ERISA policy.

4       **Q**     Are you familiar with the letters  
5 that go to any particular certificate  
6 holder that reflect or indicate premium  
7 increases or premium adjustments,  
8 Mr. Howard?

9       **A**     Yes, I believe I've seen the  
10 letters you're referring to.

11      **Q**     Have you seen them in this case?

12      **A**     Yes.

13      **Q**     Did you ever see a letter when you  
14 reviewed those wherein Mr. Tillerson's  
15 premium was actually staying the same or  
16 being lower?

17      **A**     I don't recall.

18      **Q**     I'm going to show you a document  
19 that has been produced in this case,  
20 Mr. Howard, it's a letter with PFL Life  
21 Insurance Company atop the document, and it  
22 was produced by the plaintiffs in this case  
23 Bates stamped 47 and 48. Have you seen

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1           **Q**      Who was?

2           **A**      I believe his parents or  
3 step-parents.

4           **Q**      Do you know if he was employed at  
5 that time by his father?

6           **A**      No, I don't.

7                       MR. LAMPKIN: Okay. I think  
8 that's got it.

9                       EXAMINATION BY MR. COUCH

10          **Q**      (By Mr. Couch:) Just because  
11 somebody, a relative, pays premiums on  
12 behalf of a certificate holder, based on  
13 your understanding of ERISA, does that make  
14 it an ERISA plan?

15          **A**      Can you repeat the question,  
16 please?

17          **Q**      Yes. Just because a relative pays  
18 premiums on behalf of a certificate holder,  
19 does that in fact make it a -- the  
20 certificate an ERISA plan, based on your  
21 understanding of that?

22          **A**      No.

23          **Q**      Okay. In fact, just because an

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1 employer -- I'm certainly not saying it  
2 happened in this case -- just because an  
3 employer pays benefits on behalf of an  
4 employee, that doesn't make it an ERISA  
5 plan either, does it?

6 MR. LAMPKIN: Object to the  
7 form.

8 **A** I don't feel comfortable responding  
9 to that question. That's outside of my  
10 knowledge of ERISA.

11 **Q** Yes, sir. Indeed, you said that --  
12 what you did say was Mega issues very few  
13 ERISA type plans; isn't that right?

14 **A** I did say that.

15 **Q** Well, based on the plans that you  
16 are familiar with that are ERISA based, who  
17 are they -- are those issued to any type of  
18 associations or is it an employer specific  
19 issuance?

20 **A** I don't know.

21 **Q** Do you know the plan title for any  
22 ERISA based plan?

23 **A** No.

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1       **Q**     Okay. Do you know why  
2 Mr. Tillerson changed his plan from a -- to  
3 a plan D back in 1999?

4       **A**     Not specifically, no.

5       **Q**     If he changed it to a D type plan,  
6 would you presume that he had something  
7 either an A, B, C type prior to that?

8                  MR. LAMPKIN: Object to the  
9 form.

10      **A**     I mean, I would assume he had A, B,  
11 or C, yes.

12      **Q**     Do you know if Mega was proposing  
13 that his premium was going to rise prior to  
14 his decision to change his plan type and  
15 increase his deductible or copay back in  
16 '99?

17                  MR. LAMPKIN: Object to the  
18 form.

19      **A**     No.

20      **Q**     This a letter Bates stamp 37,  
21 plaintiff's production, dated June 21,  
22 1999, proceeding his change to plan D. Can  
23 you tell from this letter what type of plan

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1 he had prior to the switch?

2       **A**     I mean, there is a handwritten  
3 notation on here, but I don't know who made  
4 that notation or I guess what it stands  
5 for. But it would appear he had plan C.

6       **Q**     All right. So in other words, his  
7 premium is going up to -- what does that  
8 letter say it's coming up to, 375?

9       **A**     Yes, it says, \$375 on July 26th,  
10 1999, if he maintains his current plan at  
11 that time.

12      **Q**     And it's been suggested to him that  
13 some other type plan with a higher  
14 deductible is something that might get his  
15 premiums down below the 375 that's about to  
16 be charged to him by Mega; is that right?

17            MR. LAMPKIN: Object to the  
18 form.

19      **A**     It's -- your statement is true with  
20 the exception that it's not a deductible,  
21 it's a copay.

22      **Q**     A copay. Sorry, just to have this  
23 right. They're suggesting -- Mega is

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1 suggesting to Mr. Tillerson back in 1999  
2 that if he keeps the plan that he's on,  
3 it's going to raise to 375, but if you want  
4 to increase your copay, then that will keep  
5 your premiums below the 375 that's about to  
6 be charged to you; is that right?

7       **A**     Yes.

8                   MR. COUCH: Okay. Mr. Howard,  
9 that's all I got. Thank you, sir.

10                  EXAMINATION BY MR. LAMPKIN

11       **Q**     (By Mr. Lampkin:) Mr. Howard, do  
12 you have any knowledge as to what the 11th  
13 circuit has said constitutes an ERISA plan?

14       **A**     No.

15                  EXAMINATION BY MR. COUCH

16       **Q**     (By Mr. Couch:) Do you have any  
17 knowledge of what Mega says is an ERISA  
18 plan?

19       **A**     I really don't understand the  
20 question.

21       **Q**     Okay. In the certificates that are  
22 -- were the ERISA plans that you are  
23 familiar with or do the certificates